

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: PDC07-033 - Pepper Lane

PROJECT FILE NUMBER: PDC07-033

PROJECT DESCRIPTION: Planned Development Rezoning from the R-1-5(PD) Planned Development & A-Agriculture Zoning Districts to the A(PD) Planned Development Zoning District to allow up to 379 single-family attached residences and 30,000 square feet for commercial uses on a 20.18 gross acres site and subsequent permits

PROJECT LOCATION & ASSESSORS PARCEL NO.: southeast corner of Berryessa and Jackson Avenue; 254-15-072, and -074

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION:

Pulte Homes Corporation
Attn: Erika Salum
6210 Stoneridge Mall Road
Pleasanton, CA 94588

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY –

The contractor for the project shall implement the following measures during all phases of construction:

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site. Active areas adjacent to existing uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (or more often if necessary) all paved access roads, parking areas, and staging areas at construction sites to prevent visible dust from leaving the site, preferably with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- Sweep streets daily (or more often if necessary) if visible soil material is carried onto adjacent public streets, preferably with water sweepers.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Suspend excavation and grading activities when winds have instantaneous gusts that exceed 25 mph.
- Limit the area subject to excavation, grading, and other construction activities at any one time.
- Clearly post signs at the construction site indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.
- Stage construction equipment away from any sensitive uses.
- Install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
- A “disturbance coordinator” will be assigned to the project when active construction is occurring within 200 feet of residences. This coordinator will confirm that all air quality construction mitigation measures are enforced. In addition, the coordinator will respond to complaints from the public regarding air quality issues in a timely manner. The contact information for the coordinator shall be posted in plain view at the project site.

At the PD Permit stage, the applicant shall submit plans that indicate the following:

- Provision of bicycle amenities including secure residential and employee bicycle parking, bicycle racks for retail customers and visitors, and bike lane connections. (The project shall provide one bicycle space for every four residential units as per the City's Zoning Ordinance.)
- Pedestrian facilities that include easy access and signage to bus stops and roadways that serve the major site uses (e.g. retail and residential uses).
- Traffic calming measures in traffic circulation and roadway connection designs.

IV. BIOLOGICAL RESOURCES –

- The applicant shall retain a qualified biologist to conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Fish and Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.
- If possible, schedule construction between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests on the site. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to issuance of any grading or building permit.

V. CULTURAL RESOURCES –

- Relocate the Vincent Nola House to a residential setting as set forth below. All relocation and rehabilitation activities shall be conducted in accordance with the *Secretary of Interior's Standards for Rehabilitating Historic Property* in order to reduce the impact to the historic resource to a less-than-significant level. Relocation plans shall be submitted to the City's Historic Preservation Officer prior to issuance of the appropriate permits as set forth below, to the satisfaction of the Director of Planning, Building, and Code Enforcement and the Director of Public Works.

- Relocate to Open Space Park Area Onsite: Relocate the house to the proposed 25,000 square foot open space area on the site and reuse as the clubhouse for the residential development, to be maintained by the homeowner's association. The house shall be sited in accordance with the plan shown in the supplemental historic evaluation in Appendix D. This option is preferred by the applicant.
 - Retain on Original Site: Retain the house at its original location onsite. Create a parcel that allows sufficient buffer area providing a setback of 25 feet on each side, 35 feet in the rear, and retaining the 30 foot setback in the front. The house shall be retained in accordance with the plan shown in the supplemental historic evaluation in Appendix D. This would require elevating the structure to match the proposed site grades above the flood elevation.
 - Relocate to an Undetermined Site: Relocate the house to a site that meets the criteria for relocation and receiver sites approved by the City. This criteria is specified in the amendment to the historic report in Appendix D. This alternative would require additional evaluation, review, and environmental clearance.
- No PD permit shall be issued on the Vincent Nola House parcel (delineated in the historic supplement and shown in Appendix D) until relocation plans are approved and entitlements issued by the City of San Jose Department of Planning, Building, and Code Enforcement. The City would identify triggers for the timing of final occupancy permits for the rehabilitation work.
 - Prior to disposing of artifacts associated with the Nola Ranch that are not wanted by the Nola, Genco, and Territo families, the Vincent Nola house and site shall be maintained and made available for salvage. The project applicant shall coordinate a salvage tour with History San Jose, Preservation Action Council of San Jose, Victorian Preservation, and the Historic Landmarks Commission by placing the salvage tour on a Historic Landmarks Commission agenda. Representatives shall tour the site in order to identify elements that warrant salvage for public information or for reuse in other locations. The applicant shall be responsible for providing access to the site, including lighting, prior to the removal of any elements from the site, and to facilitate removal and transfer for the identified elements to the above entities. Any elements not identified through this effort for salvage shall be made available to salvage companies facilitating the reuse of historic building materials.
 - Prior to any actions to relocate or remove buildings or sheds on the site, the project applicant shall submit photographic documentation as specified by the professional staff at History San Jose. The documentation modes, level, and number/orientation of views shall be approved by the City's Historic Preservation Officer. Two copies of the completed documentation shall be submitted to the City's Historic Preservation Officer. One copy should be retained by History San Jose for their archives. The photo documentation shall conform to the City's standard requirements set forth below.

Provide selected black and white views of the existing building according to the following standards:

- *Cover sheet* – The documentation shall include a cover sheet identifying the photographer, providing the address of building, common or historic name of the building, date of construction, date of photographs, and description of photographs.
 - *Camera* – A 35mm camera.
 - *Lenses* – No soft focus lenses. Lenses may include normal focus length, wide angle and telephoto.
 - *Filters* – Photographer's choice. Use of a pola screen is encouraged.
 - *Film* – Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.
 - *View* – perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure with aesthetic considerations necessary, but secondary.
 - *Lighting* – Sunlight is usually preferred for exteriors, especially of the front façade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
 - *Technical* – All areas of the photograph must be in sharp focus.
 - *Submission of Photo-Documentation:* Provide three copies of the documentation, including the original prints and negatives, to the Historic Preservation Officer for approval and distribution to History San Jose (Jim Reed, History San Jose, 1650 Senter Road, San Jose, CA 95112-2599, (408) 287-2290), the California Room at the MLK Jr. Library (Bob Johnson, Dr. MLK Jr. Library, California Room, 150 E. San Fernando St., San Jose, CA 95112, (408) 808-2136), and the Northwest Information Center at Sonoma State University. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and submitted with the above.
- If possible, documentation of the site should also include video of interviews with the Nola, Territo, and Genco families regarding their memories of the ranch operations and family.
 - The “roadside” fruit stand shall be incorporated into the proposed development to maintain a connection with the site's past use and the history of Grace Nola and the Nola Orchard. The stand should be maintained until it is relocated on the project property (e.g., within the proposed park or retail areas).
 - Relocation.: Prior to issuance of Public Works clearance, the structure(s) shall be advertised for relocation. A dollar amount equal to the estimated cost of demolition as certified by a licensed contractor shall be offered to the recipient of the building. The project applicant shall provide evidence to the Historic Preservation Officer that an advertisement has been placed in a newspaper of general circulation, posted on a website, and posted at the site for a period of no less than 30 days.

VI. GEOLOGY AND SOILS – The project will not have a significant impact on this resource, therefore no mitigation is required.

VII. HAZARDS AND HAZARDOUS MATERIALS –

- A remedial work plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement, and the Municipal Environmental Compliance Officer prior to the issuance of Public Works clearance. The plan shall be implemented to reduce contamination below Environmental Screening Levels for residential uses, assure the safety of construction workers

and future site users, and assure proper management of contaminated materials in accordance with state and local regulatory requirements. This plan shall incorporate the following:

- Soil sampling in areas adjacent to painted structures for lead and pesticide residuals. If results indicate the presence of such materials in excess of the Environmental Screening Levels for residential uses, site remediation shall be completed to reduce contamination to acceptable levels.
 - A soil management component to establish the management practices for handling any items encountered during construction such as buried debris, impacted soil, and/or burn pits.
- All remaining hazardous materials that may be stored on the site shall be removed and properly disposed of prior to commencement of construction activities on the site.
 - The existing wells and septic systems shall be properly abandoned in accordance with all applicable regulations.

VIII. HYDROLOGY AND WATER QUALITY – The project will not have a significant impact on this resource, therefore no mitigation is required.

IX. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

X. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. NOISE –

- All new multi-family housing is subject to the requirements of the 2007 California Building Code (Chapter 12, Appendix Section 1207.11.2). Since noise levels exceed 60 dBA DNL on the site, an analysis detailing the treatments incorporated in the building plans shall be submitted to the City Building Department prior to issuance of a building permit. The report shall demonstrate that the design would achieve an interior DNL of 45 or less in all habitable residential areas. Typically, where the exterior noise levels are between 60-70 dBA DNL, treatments include forced-air mechanical ventilation or air conditioning to achieve a habitat interior environment with the windows closed. The noise study for the project identified the need for sound-rated windows and exterior door assemblies for some units, as presented in Appendix G.
- Mitigation shall be provided for outdoor use areas for balconies and patios of residences exposed to noise levels of 76 dBA DNL or greater (i.e., along Berryessa Road). This could include partial height or full “greenhouse-type” noise barriers. The specific treatments shall be determined on a unit-by-unit basis. Results of the unit-by-unit acoustical analysis, including the description of the necessary noise control treatments, shall be submitted to the City prior to issuance of PD permit.
- Prior to development of the proposed commercial uses, prepare a project-specific acoustical analysis to evaluate noise sources at the proposed retail center and implement

recommendations to assure that exterior noise levels at adjacent residential uses are not exceeded, in accordance with the standards in the City's Zoning Ordinance.

- XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. TRANSPORTATION / TRAFFIC** –

Project Mitigation

- **US 101 Northbound Ramp/Old Oakland Road Intersection.** The recommended improvement measure for this intersection is consistent with the planned roadway improvements identified as part of the North San Jose Development Plan and the Flea Market Development Project. These improvements consist of adding a second southbound right-turn lane and a second northbound left-turn lane. This improvement would require significant modification to the existing structure. The project developer shall implement the following:
 - Participate in the City's US 101/Oakland/Mabury Transportation Development Policy. The City of San Jose has an adopted transportation policy for the US 101/Oakland/Mabury transportation corridor that will allow developments to pay a traffic impact fee based on the amount of project traffic traveling through this corridor. The policy includes improvements on the US 101/Oakland Road interchange, improvements to maximize capacity at the intersections of Old Oakland/Commercial Street and Berryessa Road/Commercial Street, and construction of a new US-101/Mabury interchange. The intent of the policy is to allow more projects to develop and temporarily allow traffic congestion in excess of the City's LOS standard for a limited time prior to construction of the required transportation improvements. The new policy includes a fee requiring all new developments to pay a fair share contribution for using a portion of the interchange capacity that would be created with the buildout of the US 101/Oakland Road interchange and construction of a new US 101/Mabury Road interchange. Based on the new available capacity that would be created, each new development would be required to contribute \$30,000 for each new PM peak hour vehicle trip that it would add to the US 101/Oakland Road interchange.
- **Commercial Street/Old Oakland Road Intersection.** The addition of a second westbound left-turn lane would improve conditions to an acceptable level. This improvement measure is consistent with the planned roadway improvements identified as part of the North San Jose Development Policy and the Flea Market development project and is also identified in the US 101/Oakland/Mabury Transportation Development Policy, within which the project proposes to participate (see above).

Cumulative Mitigation

- **Berryessa Road/Capitol Avenue.** Converting the southbound approach to provide one through lane, one shared through/right-turn lane, and one right-turn only lane would improve the operating conditions to an acceptable LOS D. The overlapping right-turn phasing for the southbound approach may need to be removed, however the intersection would continue to operate at acceptable levels of service with the recommended change in striping. The estimated cost for this improvement is approximately \$10,000 or less, and would not require modification to the existing curb line. The Pepper Lane project will make a fair share contribution toward improvements to this intersection.
- **Commercial Street/Old Oakland Road Intersection.** See above for Project Mitigation.

XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **April 17,2008**, any person may:

Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: _____ Deputy _____

Adopted on: _____ Deputy _____

MND/JAC 8/26/05